

Atty Docket No. 020903-014400US

PTO FAX NO.: 1 703 308-6916

ATTENTION: Examiner Not Yet Assigned  
TELEPHONE NO.:

Group Art Unit NYA

**OFFICIAL COMMUNICATION**  
**FOR THE PERSONAL ATTENTION OF**  
**EXAMINER Not Yet Assigned**

**CERTIFICATION OF FACSIMILE TRANSMISSION**

I hereby certify that the following document(s) in re Application of Irvin H. Stumler, Application No. 09/868,527, filed June 19, 2001 for DISPENSING MACHINE WITH PORTION CONTROL is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

Document(s) Attached

1. Petition for Revival
2. Communication
3. Fee Transmittal
4. Power of Attorney
5. Revocation of Power of Attorney
6. Statement Under 37 CFR 3.73(b)

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FEB 26 2003

PETITIONS OFFICE

Number of pages being transmitted, including this page:

Dated: 2/26/03

  
\_\_\_\_\_  
Lata Olivier

**PLEASE CONFIRM RECEIPT OF THIS PAPER BY  
RETURN FACSIMILE AT (415) 576-0300**

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, 8th Floor  
San Francisco, CA 94111-3834  
Telephone: 415-576-0200  
Fax: 415-576-0300  
SP 1436495 v1

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)  
020903-014400US

First named inventor: Irvin H. Stumler

Application No.: 09/888,527

Art Unit: Not Assigned Yet

Filed: June 19, 2001

Examiner: NYA **FAX RECEIVED**

Title: DISPENSING MACHINE WITH PORTION CONTROL

**FEB 26 2003**

Attention: Office of Petitions  
Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

**PETITIONS OFFICE**

NOTE: If information or assistance is needed in completing this form, please contact  
Petitions Information at (703)305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**

☐ Small entity - fee \$\_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☒ Other than small entity - fee \$1300 (37 CFR 1.17(m))

**2. Reply and/or fee**

A. The reply and/or fee to the above-noted Office action in  
the form of COMMUNICATION (identify type of reply):

- ☐ has been filed previously on \_\_\_\_\_  
☒ is enclosed herewith.

B. The issue fee of \$ \_\_\_\_\_

- ☐ has been paid previously on \_\_\_\_\_  
☐ is enclosed herewith.

[Page 1 of 2]

Burden Hour Statement: This form is estimated to take 1.0 hour to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

3. Terminal disclaimer with disclaimer fee

- ☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$\_\_\_\_\_ for a small entity or \$\_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

2/26/03

Date

*Kevin T. LeMond*

Signature

Telephone  
Number: (415) 576-0200

Kevin T. LeMond

Typed or printed name

Townsend and Townsend and Crew LLP

Two Embarcadero Center

8th Floor

San Francisco, CA 94111

Address

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

☒ Other Power of Attorney; Revocation of Power of Attorney; Statement Under 37 CFR 3.73(b)

**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

☐ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231.

☒ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

2/26/03

Date

*Lata Olivier*

Signature

Lata Olivier

Typed or printed name of person signing certificate

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

PATENT  
Docket No.: 020903-014400US

On 2/26/03

TOWNSEND and TOWNSEND and CREW LLP

By: [Signature]

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

Irvin H. Stumler

Application No.: 09/868,527

Filed: June 19, 2001

For: DISPENSING MACHINE WITH  
PORTION CONTROL

Examiner: Not Yet Assigned

Art Unit: NYA

COMMUNICATION

**FAX RECEIVED**

**FEB 26 2003**

**PETITIONS OFFICE**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

Applicant is petitioning for revival of this unintentionally abandoned patent application. It is applicant's belief that this application went abandoned for failure to pay the filing fee. Accordingly, applicant hereby authorizes the Commissioner to charge the filing fee to Deposit Account 20-1430.

This application was filed based upon PCT patent application No. PCT/US00/11743. The application was filed before the Chapter II National Phase deadline of October 27, 2001. Shortly after filing the present application, the entire interest and all rights in this case were assigned to Dreyer's Grand Ice Cream, Inc.

Dreyer's did not realize that a National Phase application (this present application) had already been filed and thus, their previous patent counsel filed a second National Phase application (Application No. 10/030,517). Because two patent applications could not be filed from the same PCT application, the USPTO canceled the second application (Application No. 10/030,517).

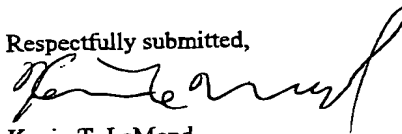
Dreyer's has subsequently transferred these cases to Townsend and Townsend and Crew and we have become aware of the situation. Thus, we are petitioning for revival of the unintentionally abandoned patent application No. 09/868,527. It is believed that the chain of events outlined above support the position that application no. 09/868,527 was unintentionally abandoned.

Accordingly, applicant hereby authorizes the Commissioner to charge the filing fee and Petition to Revive fee to Deposit Account 20-1430.

CONCLUSION

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at (415) 576-0200.

Respectfully submitted,



Kevin T. LeMond  
Reg. No. 35,933

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, 8<sup>th</sup> Floor  
San Francisco, California 94111-3834  
Tel: (415) 576-0200  
Fax: (415) 576-0300  
KTL:lo  
SF 1435028 v1

# FEE TRANSMITTAL for FY 2003

Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 2386

Complete if Known

Application Number 09/868,627

Filing Date June 19, 2001

First Named Inventor Stumler, Irvin H.

Examiner Name Not Yet Assigned

Group Art Unit NYA

Attorney Docket No. 020903-014400US

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## METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account:

Deposit  
Account  
Number

20-1430

Deposit  
Account  
Name

Townsend and Townsend and Crew LLP

The Commissioner is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments  
☒ Charge any additional fee(s) during the pendency of this application

☐ Charge fee(s) indicated below, except for the filing fee  
to the above-identified deposit account.

## FEE CALCULATION

### 1. BASIC FILING FEE

Large Entity Small Entity

Fee Fee Fee Fee  
Code (\$) Code (\$) Fee Description

1001 750 2001 375 Utility filing fee

1002 330 2002 165 Design filing fee

1003 520 2003 260 Plant filing fee

1004 750 2004 375 Reissue filing fee

1005 160 2005 80 Provisional filing fee

Fee Paid

750

SUBTOTAL (1)

(\$750)

### 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims 18 -20\*\* = 0 Extra Claims Fees from below Fee Paid

Independent Claims 7 -3\*\* = 4 336 \$336

Multiple Dependent X =

Large Entity Small Entity

Fee Fee Fee Fee  
Code (\$) Code (\$) Fee Description

1202 18 2202 9 Claims in excess of 20

1201 84 2201 42 Independent claims in excess of 3

1203 280 2203 140 Multiple dependent claims, if not paid

1204 84 2204 42 -- Reissue independent claims over original patent

1205 18 2205 9 -- Reissue claims in excess of 20 and over original patent

SUBTOTAL (2)

(\$336)

\*\*or number previously paid, if greater; For Reissues, see above

## FEE CALCULATION (continued)

### 3. ADDITIONAL FEES

Large Entity Small Entity

Fee Fee Fee Fee  
Code (\$) Code (\$) Fee Description

1051 130 2051 65 Surcharge - late filing fee or oath

1052 50 2052 25 Surcharge - late provisional filing fee or cover sheet

1053 130 2053 65 Non-English specification

1812 2,520 2812 1,260 For filing a request for reexamination

1804 920\* 2804 460\* Requesting publication of SIR prior to Examiner action

1805 1,840\* 2805 920\* Requesting publication of SIR after Examiner action

1251 110 2251 55 Extension for reply within first month

1252 410 2252 205 Extension for reply within second month

1253 930 2253 465 Extension for reply within third month

1254 1,450 2254 725 Extension for reply within fourth month

1255 1,870 2255 935 Extension for reply within fifth month

1401 320 2401 160 Notice of Appeal

1402 320 2402 160 Filing a brief in support of an appeal

1403 280 2403 140 Request for oral hearing

1451 1,510 2451 755 Petition to institute a public use proceeding

1452 110 2452 55 Petition to revive - unavoidable

1453 1,300 2453 650 Petition to revive - unintentional

1501 1,300 2501 650 Utility issue fee (or reissue)

1502 470 2502 235 Design issue fee

1503 630 2503 315 Plant issue fee

1450 130 2450 65 Petitions to the Commissioner

1807 50 2807 25 Petitions related to provisional applications

1806 180 2806 90 Submission of Information Disclosure Stmt

8021 40 8021 20 Recording each patent assignment per property (times number of properties)

1809 750 2809 375 Filing a submission after final rejection (37 CFR § 1.129(a))

1910 750 2910 375 For each additional invention to be examined (37 CFR § 1.129(b))

1801 750 2801 375 Request for Continued Examination (RCE)

1802 900 2802 450 Request for expedited examination of a design application

Other fee (specify)

\*Reduced by Basic Filing Fee Paid SUBTOTAL (3)

(\$1300)

## SUBMITTED BY

Name (Print/Type)

Kevin T. LeMond

Registration No. (Attorney/Agent)

35,933

Telephone

415-576-0200

Signature

*Kevin T. LeMond*

Date

2/26/03

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2036.

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**STATEMENT UNDER 37 CFR 3.73(b)**

Applicant/Patent Owner: Dreyer's Grand Ice Cream, Inc.

Application No./Patent No.: 09/868,527

Filed/Issue Date: 05/19/2001

Entitled: DISPENSING MACHINE WITH PORTION CONTROL

Dreyer's Grand Ice Cream, Inc.

(Name of Assignee)

a Delaware Corporation

(Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of less than the entire right, title and interest.  
The extent (by, percentage) of its ownership interest is \_\_\_\_\_%

in the patent application/patent identified above by virtue of either:

- A. ☒ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel 012083, Frame 0873, or for which a copy thereof is attached.

OR

- B. ☐ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

1. From: \_\_\_\_\_ To: \_\_\_\_\_  
The document was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

2. From: \_\_\_\_\_ To: \_\_\_\_\_  
The document was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

3. From: \_\_\_\_\_ To: \_\_\_\_\_  
The document was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

- ☒ Copies of assignments or other documents in the chain of title are attached.  
**(NOTE: A separate copy (i.e., the original assignment document or a true copy of the original document) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.8)**

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

2-20-03  
Date

Vicki L. Randall  
Typed or printed name  
[Signature]  
Signature  
Associate General Counsel  
Title

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SF 1428374 v1

TOTAL P.04

Please type a plus sign (+) inside this box → ☐

1 510 450 4592 P.03/04  
Rec'd PCT/PTO 26 FEB 2003

09/868527

Approved for use through 10/31/2002. OMB 0651-0035  
Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE  
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<b>REVOCATION OF POWER OF ATTORNEY OR AUTHORIZATION OF AGENT</b>	Application Number	09/868,527
	Filing Date	06/19/2001
	First Named Inventor	Irvin H. Stumler
	Group Art Unit	
	Examiner Name	
	Attorney Docket Number	020903-01A00US

I hereby revoke all previous powers of attorney or authorizations of agent given in the above-identified application:

FAX RECEIVED

☒ A Power of Attorney or Authorization of Agent is submitted herewith.

OR

☐ Please change the correspondence address for the above-identified application to:

☒ Customer Number



OR

<input type="checkbox"/> Firm or Individual Name					
Address					
Address					
City					
Country		State		ZIP	
Telephone		Fax			

I am the:

☐ Applicant/Inventor.

☒ Assignee of record of the entire interest. See 37 CFR 3.71.  
Certificate under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

**SIGNATURE of Applicant or Assignee of Record**

Name	Vicki L. Randall, Associate General Counsel
Signature	
Date	2-20-03

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ Total of \_\_\_\_\_ forms are submitted.

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Rec'd PCT/PTO 26 FEB 2003  
09/868527


Please type a plus sign (+) inside this box → ☐

PTO/SB/81 (02-01)  
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U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

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<b>POWER OF ATTORNEY R AUTHORIZATION OF AGENT</b>	<b>Application Number</b>	09/868,527
	<b>Filing Date</b>	08/19/2001
	<b>First Named Inventor</b>	Irvin H. Stumler
	<b>Title</b>	DISPENSING MACHINE WITH PORTION CONTROL
	<b>Group Art Unit</b>	
	<b>Examiner Name</b>	
	<b>Attorney Docket Number</b>	020903-014400US

I hereby appoint:

☒ Practitioners at Customer Number  →  20350  
PATENT TRADEMARK OFFICE

OR

☐ Practitioner(s) named below:

Name	Registration Number

as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith.

Please change the correspondence address for the above-identified application to:

☒ The above-mentioned Customer Number.

OR

☐ Practitioners at Customer Number  →

☐ Firm or Individual Name

Address

Address

City State ZIP

Country

Telephone Fax


I am the:

☐ Applicant/Inventor.

☒ Assignee of record of the entire interest. See 37 CFR 3.71.

Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

**SIGNATURE of Applicant or Assignee of Record**

<b>Name</b>	Vicki L. Randall, Associate General Counsel
<b>Signature</b>	
<b>Date</b>	2-20-03

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ Total of forms are submitted.

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